ST 99-0331-GIL 11/08/1999 LEASING

In Illinois, lessors of tangible personal property under a true lease, except for automobiles leased for terms of one year or less, are considered to be the end users of the property to be leased. As the end users of tangible personal property located in Illinois, lessors incur Use Tax on the lessors' cost price of the property. See 86 Ill. Adm. Code 130.220 and 130.2010. (This is a GIL).

November 8, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated July 29, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

> I need clarification relating to sales tax due at lease end. We are a leasing company headquartered outside the state of Illinois, with a sales office located in CITY Illinois. Our primary business is true leases. Conditional sales are a very small portion of our business (less than 10%). At lease end, equipment is either sold to the lessee at fair market value or returned to our inventory where it is sold. In most cases this equipment is sold to retailers that will refurbish and resell the equipment at retail. There are several possible lease end scenarios we may encounter.
>
> Please review each of the following scenarios and comment on my understanding of the application of the sales and use tax in each one

	Scenario	**Application of Sales & Use Tax**
1	Equipment ($100,000 cost) was purchased from an Illinois vendor and placed on lease in Illinois. Sales tax of 7.25% (7,250) was paid. At the end of the lease term the equipment is sold to the lessee for $50,000.	Sales tax of 6.75% ($3,375) would be charged on the invoice. A credit of $3,375 would be taken on line 19 of our ST-1 return for tax previously paid. (6.75% rate is based on our sales office location in CITY)
2	Equipment ($100,000 cost) was purchased from an Indiana vendor and placed on lease in Illinois. Use tax of 6.25% (6,250) was paid. At the end of the lease term the equipment is sold to the lessee for $50,000	Sales tax of 6.75% ($3,375) would be charged on the invoice. A credit of $3,375 would be taken on line 19 of our ST-1 return for tax previously paid. (6.75% rate is based on our sales office location in CITY)
3	Equipment ($100,000 cost) was purchased from an Indiana vendor and placed on lease in Illinois. Use tax of 6.25% (6,250) was paid. At the end of the lease term the equipment is returned to Lessor's inventory located in Ohio. Equipment is sold to Illinois Customer for $50,000 by equipment management staff located in Ohio.	Only State Sellers Use Tax of 6.25% would be due on the transaction, unless a resale or exemption certificate is received.. A credit of $3,125 would be taken on line 19 of our ST-1 return for tax previously paid.

4	Equipment ($100,000 cost) was purchased from an Indiana vendor and placed on lease in Illinois. Use tax of 6.25% (6,250) was paid. At the end of the lease term the equipment remains in Illinois. Equipment is sold to Illinois Customer for $50,000 by equipment management staff located in Ohio.	Sales tax of 6.75% ($3,375) would be charged on the invoice, unless a resale or exemption certificate is received. A credit of $3,375 would be taken on line 19 of our ST-1 return for tax previously paid. (6.75% rate is based on our sales office location in CITY),
5	Equipment ($100,000 cost) was purchased from an Indiana vendor and placed on lease in Illinois. Use tax of 6.25% ($6,250) was paid. At the end of the lease term, the lessee elects to extend the lease for 18 months. At the end of the 18 monthly payments of $3,000, lessor will sell the equipment to lessee for $1 or abandon it.	Sales tax of 6.75% ($202.50) would be charged on each of the 18 monthly rental invoices. A credit would be taken on line 19 of our ST-1 return for tax previously paid. The sum of the credits taken could not exceed $6,250. (6.75% rate is based on our sales office location in CITY)

I am particularly unsure as the proper way to recover the credit referred to in ST-19 Retailer’s Tax Booklet. Is the credit taken on the return as a separate item on line 19 of the ST-1, or should the taxable sales be deducted as other item on the back of the ST-1.

Your prompt attention to our questions will be appreciated. Please send your reply to my attention.

In Illinois, lessors of tangible personal property under a true lease, except for automobiles leased for terms of one year or less, are considered to be the end users of the property to be leased. See the enclosed copies of 86 Ill. Adm. Code 130.220 and 130.2010. As the end users of tangible personal property located in Illinois, lessors incur Use Tax on the lessors' cost price of the property. Since lessors are considered the end users of the property and have paid the Use Tax, no Retailers' Occupation Tax is imposed upon the rental receipts and the lessees incur no Use Tax liability for the rental charges. In Illinois, a true lease generally has no buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease.

The alternative to a true lease is a conditional sale. In Illinois, a conditional sale is usually characterized by a nominal purchase option at the close of the lease term. This type of transaction is considered a conditional sale at the outset of the transaction making all receipts subject to Retailers' Occupation Tax. See Section 130.2010. In this situation, lessors/retailers may give Certificates of Resale to their suppliers for tangible personal property transferred subject to a conditional sales agreement. The lessors/retailers owe Retailers' Occupation Tax on any installment payments when they are received by the lessors/retailers. The lessees/purchasers owe corresponding Use Tax on the amount of the installment payments that are collected by the lessors/retailers.

As stated above, lessees do not incur any tax liability in a true lease situation. However, it is typical of true leases to contain contractual provisions stating that the lessees will *reimburse* the lessors for their tax costs. This is not a matter of Illinois tax law but of private agreement between lessors and lessees. If the lessees agreed to such provisions, they are bound to satisfy that duty because of a contractual agreement, not because of Illinois tax law.

When lessors sell tangible personal property that has come off of true leases and such lessors are not otherwise engaged in the business of selling like-kind tangible personal property, the such sales are generally considered non-taxable occasional sales as described in 86 Ill. Adm. Code 130.110, enclosed. If the lessors are also sellers of like-kind property, then such sales are generally subject to Retailers’ Occupation Tax. See also Section 130.220(c), which may be of interest in determining the tax properly due.

However, if such lessors paid Illinois Use Tax to their supplier upon their original purchase, a deduction is available against their Retailers’ Occupation Tax liability on the subsequent sale. See Informational Bulletin FY 86-54, enclosed, for details. If no tangible personal property is sold, no Retailers’ Occupation Tax liability is incurred. If lessors self-assessed Use Tax on a return instead of paying such tax to suppliers, the above deduction is not allowable. Such lessors may recover the previously paid tax by filing a claim for credit.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Gina Roccaforte
Associate Counsel

GR:msk
Enc.